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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,295	03/12/2004	Michael P. Wallace	04-050 US01	8148

41696 7590 07/05/2006

VISTA IP LAW GROUP LLP
12930 Saratoga Avenue
Suite D-2
Saratoga, CA 95070

EXAMINER

EVANSKO, GEORGE ROBERT

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/799,295	Applicant(s) WALLACE ET AL.	
	Examiner George R. Evanisko	Art Unit 3762	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 16-18, 20, 21 and 28-30.
- Claim(s) withdrawn from consideration: 31-34.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.

George R Evanisko
Primary Examiner
Art Unit: 3762
6/29/6

Continuation of 11. does NOT place the application in condition for allowance because: the art still applies to the claims. The argument that Wilk is not a crescent shape is not persuasive. The applicant shows in figure 17 a device shaped "like" a crescent and describes the figure as being crescent. Although, Applicants device shown in figure 17 is not a true crescent. Since the applicants device is not a true crescent and Wilk shows a similar crescent shaped device, Wilk meets the limitations of "crescent shaped". The applicant can not arbitrarily pick and choose what devices meet or do not meet a crescent shape since the applicants device shown in figure 17 is not a crescent and therefore the limitation of "crescent shape" is taken in its broadest reasonable interpretation as being a general crescent shape, such as seen in Wilk. In addition, the argument that Wilk describes his device as C-shaped is not persuasive since Wilk states his device is "generally" C-shaped and it is noted that the applicants device is also "generally" C-shaped. Finally, the argument that Wilk could not be used for the epidural space is not persuasive since the size of the epidural space is a relative size and/or depends on the particular animal/person the device is being used on.

The arguments that Hess does not disclose an element that can be placed between a straight configuration and a curved configuration or that Hess does not have an electrode associated with a tubular structure or the device is not a resilient hollow tubular structure are not persuasive. Hess discloses the lead is tubular, or has a tubular passage, in column 2, line 50, and therefore meets the claimed "hollow tubular structure". Hess also states the lead is flexible and resilient, line 60, and has an electrode, 30, that is "associated" with the tubular structure since it is on the same lead. It is noted that "associated with" is a broad limitation and any interaction between the lead and electrode will meet the claimed limitation of being "associated with". Finally, as discussed above regarding the crescent shape, Cross contains a general crescent shaped lead and provides motivation for this shape in spinal leads to provide a lead that matches the spinal cord to provide better contact with the spinal tissue..